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 10     KIMBERLY J. HUSTED,  
 11     Chapter 7 Trustee

8                   **UNITED STATES BANKRUPTCY COURT**  
 9                   **EASTERN OF CALIFORNIA**  
 10                  **(Sacramento Division)**

11     In re  
 12     GRANITE BAY INVESTMENT  
 13     PARTNERS, LLC,  
 14     Debtor.

15     Case No.: 13-29661-C-7  
 16     DC No.: HSM-004  
 17     Date: March 11, 2014  
 18     Time: 9:30 a.m.  
 19     Place: 501 I Street  
 20     Sacramento, CA  
 21     Ctrm. 35, 6th Flr.  
 22     Judge: Christopher M. Klein

17                   **TRUSTEE'S MOTION FOR APPROVAL OF SALE OF REAL PROPERTY**  
 18                   **(1533 & 1535 ORLANDO WAY) FREE AND CLEAR OF LIENS**  
 19                   **AND ENCUMBRANCES, AND TO PAY EXPENSES OF SALE,**  
 20                   **INCLUDING COMMISSION TO REAL ESTATE AGENT**

21       KIMBERLY J. HUSTED, the duly appointed Chapter 7 Trustee ("Trustee") in the  
 22       pending bankruptcy case of GRANITE BAY INVESTMENT PARTNERS, LLC (the "Debtor"),  
 23       Case No. 13-29661-C-7, files this Trustee's Motion for Approval of Sale of Real Property 1533  
 24       & 1535 Orlando Way) Free and Clear of Liens and Encumbrances and to Pay Expenses of  
 25       Sale, Including Commission to Real Estate Agent ("Motion") as follows:

26       1. This case was filed as an involuntary Chapter 7 case on July 23, 2013. An order  
 27       for relief was thereafter entered and the Trustee was appointed as Chapter 7 Trustee on  
 28       September 26, 2013. The Trustee continues to serve in that capacity.

29       2. Jurisdiction for the filing of this Motion exists pursuant to 28 U.S.C. §§ 157 and

1      1334; 11 U.S.C. §§ 363(b), 363(f) and 503(b); and the reference to this Court by the District  
 2 Court for the Eastern District of California.

3                    **Introduction and Relief Requested**

4        3. One of the assets of the Estate, and the property that is the subject of this  
 5 Motion, consists of the Estate's right, title, and interest in and to that certain real property  
 6 commonly known as 1533 & 1535 Orlando Way, Sacramento, CA 95815, APN 266-0413-014  
 7 (the "Property"). The Property was listed on Debtor's Schedules A and D filed in this case on  
 8 October 28, 2013, with an estimated value of \$150,000.00.

9        4. After the Trustee's appointment in this case, and based on her investigation of  
 10 the Property, the Trustee elected to retain Reed Block Realty, a real estate brokerage firm  
 11 ("Firm"), and specifically Reed Block, as her real estate agent (collectively "Agent"). An  
 12 application requesting Court approval of the employment of the Broker/Agent on behalf of the  
 13 Estate was filed on January 10, 2014, and the employment was approved by this Court on  
 14 January 15, 2014.

15       5. Pursuant to the efforts of the Agent, the Trustee has received and accepted an  
 16 offer to purchase the Property from Kevin Reynolds and Patcharin Reynolds (collectively  
 17 "Buyer"), subject to Court approval and overbidding. The terms of the proposed offer to  
 18 purchase the Property are summarized in the description of the Purchase Agreement  
 19 described below.

20       6. This Motion seeks approval from the Court for (i) the Trustee's entry of the  
 21 Purchase Agreement and sale of the Property pursuant to the terms thereof, (ii) sale of the  
 22 Property free and clear of the Attachment, Lis Pendens, and the Mechanic's Lien (if the  
 23 Trustee is unable to obtain voluntary removal of these liens); (iii) payment of the commission  
 24 to Agent consistent with the approved listing agreement, if the proposed sale is approved and  
 25 consummated with the proposed Buyer or any successful Qualified Overbidder (as described  
 26 in the overbidding process below), and (iv) payment of other customary expenses of closing  
 27 associated with this sale.

28        ///

## **Purchase Agreement**

7. Buyer's offer to purchase has been accepted by the Trustee, as Seller, through the mutual execution of that certain California Residential Purchase Agreement and Joint Escrow Instructions and Counter Offer No.1 thereto dated as of January 23, 2014, and the First Amendment thereto dated as of February 3, 2014 (collectively, the "Purchase Agreement"). A true and correct copy of the Purchase Agreement is attached as Exhibit "A" to the Exhibits Cover Sheet filed and served with this Motion.

8. The material terms of the Purchase Agreement are as follows:

a. The Purchase Price for the Property is \$114,000.00 ("Purchase Price" or "Sales Proceeds");

b. Buyer has deposited the sum of \$10,000.00 (the "Deposit") into escrow.

The Deposit is creditable against the Purchase Price and is non-refundable after satisfaction of all of Buyer's conditions to closing, subject to Seller obtaining Court approval of this Agreement. If Buyer fails to close the purchase due to default by Buyer, the Deposit shall be non-refundable and shall be retained by the Trustee as liquidated damages for such breach;

c. The proposed sale of the Property and the Purchase Agreement are subject to Bankruptcy Court approval through the granting of this Motion;

d. Buyer will pay the Purchase Price and close escrow on or before the later of 30 days from acceptance, 3 days after expiration of the contingency periods, or 15 days after the filing of the Court's order approving this Motion (the "Closing Date").

e. The following closing costs will be allocated to the Estate and paid from the Sales Proceeds: (i) one-half the cost of the escrow fee; (ii) the premium for the standard coverage title insurance policy; (iii) the costs to prepare and record the grant deed and other costs related thereto, including the documentary transfer tax; (iv) the prorated share of real property taxes and assessments secured against the Property (including the costs to cure any delinquencies related thereto) and rents and utilities related to the Property; and (v) any amounts required to be withheld for state or federal taxes. The portion of the Sales Proceeds remaining after deduction of the foregoing costs allocable to the Estate as Seller, and after

1 payment of the commission to the Agent as approved by the Court, shall be referred to herein  
 2 as the "Net Sales Proceeds;"

3 f. Buyer will acquire the Property in its "AS IS," "WHERE IS," "WITH ALL  
 4 FAULTS" condition. Trustee is making no representations or warranties, directly or indirectly,  
 5 with respect to the condition or history of the Property and has no duty to inquire or investigate  
 6 or provide any disclosures related to the Property. Buyer shall rely solely on its own  
 7 investigation of the Property in the decision to acquire the Property;

8 g. Title to the Property shall be subject to all liens or encumbrances for real  
 9 property taxes and/or assessments which are not delinquent as of the close of escrow. As  
 10 discussed below, title to the Property appears to be subject to a lien created by the recordation  
 11 of a Writ of Attachment and related Lis Pendens (Ms. Conley) and a lien arising from the  
 12 recordation of a Mechanics Lien (CEJA). As set forth in detail below, the Trustee is requesting  
 13 authority from the Court to sell the Property free and clear of the Attachment, Lis Pendens and  
 14 Mechanics Lien pursuant to 11 U.S.C. § 363(f)(4).

15 h. Trustee is not aware of any other secured interests against the Property.  
 16 If any other monetary liens are discovered to exist against the Property, delivery of title free  
 17 and clear from such other monetary liens may require the cooperation and consent of any lien  
 18 holders. The Purchase Agreement allows that, if any other such secured creditor's consent  
 19 cannot be obtained at least seven (7) days before the hearing date on this Motion, then the  
 20 Trustee may request extension(s) of the hearing date for up to thirty (30) days and if the  
 21 Trustee is still unable to obtain such consent, Buyer's sole recourse will be to either assume  
 22 the lien, without adjustment to the Purchase Price, or terminate the Agreement and receive  
 23 the refund of the Buyer's deposit.

24 i. With respect to the improvements and any fixtures located on the Property  
 25 in which this bankruptcy Estate owns any interest therein, this Motion seeks authority to sell  
 26 and transfer to the Buyer the Estate's interest in such assets as part of the Property;

27 j. Buyer's obligation to purchase the Property is contingent upon Buyer's  
 28 review and approval of title to the Property and approval of the condition of the Property within

1      a 17-day due diligence period from the date of full execution of the Purchase Agreement;  
 2                k.      Buyer's obligation to purchase the Property is also contingent upon Buyer  
 3 obtaining \$85,500.00 of lender financing towards the payment of the Purchase Price. Buyer  
 4 is obligated to notify the Trustee of Buyer's satisfaction or waiver of this contingency within the  
 5 17-day due diligence period;

6                l.      The Trustee, on behalf of the Estate, will cause this Motion and all papers  
 7 related thereto to be filed for a hearing on this Motion as soon as possible; and

8                m.      The proposed sale to Buyer is subject to overbidding at the hearing on this  
 9 Motion. If no overbids for the Property are made at the hearing on this Motion, or if the Buyer  
 10 is the highest bidder for the Property at the hearing on the Motion, the Deposit shall be applied  
 11 to the Purchase Price or the highest price bid by Buyer at the hearing on the Motion,  
 12 whichever is greater. If a Qualified Overbidder outbids Buyer, Buyer shall remain obligated  
 13 to buy the Property at the Purchase Price or its highest bid, if the overbidder fails to close and  
 14 Buyer is the next highest bidder on the Property. If a Qualified Overbidder outbids Buyer and  
 15 closes its purchase of the Property, then the Purchase Agreement shall terminate and the  
 16 Deposit shall be returned to Buyer.

#### **Sale Free and Clear of Attachment, Lis Pendens and Mechanics Lien**

18        9.      Based upon the Trustee's review of the Debtors' Schedules, a preliminary title  
 19 report for the Property and recorded liens and encumbrances provided by the title company,  
 20 the only recorded liens and encumbrances that appear to encumber the Property are the  
 21 following:

22                a.      the liens for delinquent taxes, assessments and utilities, which the Trustee  
 23 proposes be paid from the proceeds of the sale;

24                b.      the Attachment and the related Lis Pendens recorded by Ms. Conley; and  
 25                c.      the Mechanics Lien in favor of CEJA.

26        12.      Pursuant to 11 U.S.C. § 363(f), the Trustee may sell property of the estate: "free  
 27 and clear of any interest in such property of an entity other than the estate, if . . . (2) such  
 28 entity consents; . . . [or] (4) such interest is in bona fide dispute[.]" To satisfy the conditions of

1     the Purchase Agreement, the proposed sale of the Property must be free and clear of  
 2 interests, including liens and encumbrances, pursuant to 11 U.S.C. § 363(f).

3       10. The Debtor's Schedule D also discloses a state court Writ of Attachment  
 4 recorded against the Property on or around June 3, 2013, in the amount of \$300,000.00 (the  
 5 "Attachment"), in favor of Cameron Conley ("Ms. Conley"). A preliminary title report for the  
 6 Property reflects the date of recordation of the Attachment as June 28, 2013, and also  
 7 discloses the recordation of a notice of pendency of action on June 21, 2013 in the ancillary  
 8 superior court case (the "Lis Pendens"). With this bankruptcy case being filed on July 23,  
 9 2013, the Attachment was recorded 25 days and the related Lis Pendens was recorded 32  
 10 days prior to the filing of this case.

11      11. Through her counsel Michael Mahon, Ms. Conley has acknowledged to the  
 12 Trustee's counsel the Trustee's right to avoid both the Attachment and Lis Pendens, and has  
 13 further indicated that she will execute releases of these encumbrances to support the sale of  
 14 the Property. The Trustee is preparing such releases for Ms. Conley's review and approval  
 15 and anticipates having those documents recorded before the hearing on this Motion. Until  
 16 such time, however, the Trustee asserts that the Attachment and Lis Pendens are in bona fide  
 17 dispute pursuant to section 363(f)(4) of the Bankruptcy Code, and therefore, that the sale  
 18 proposed herein may be approved by this Court free and clear of Ms. Conley's liens /  
 19 encumbrances with same attaching to the proceeds of the sale in the same order and priority  
 20 as exists at present and subject to whatever defenses may exist to the claims and/or liens and  
 21 subject to any agreed-upon carve-outs and/or surcharges as may be ordered pursuant to 11  
 22 U.S.C. § 506(c).

23      12. The preliminary title report also discloses the recordation of a mechanics lien  
 24 against the Property on August 23, 2013, one month following the commencement of this  
 25 bankruptcy case, in the amount of \$6,025.00 (the "Mechanics Lien"), in favor of CEJA  
 26 Construction Services, Inc. ("CEJA"). The preliminary title report does not evidence any  
 27 subsequent filing by CEJA of a complaint to foreclose the lien, a required step under California  
 28 law to perfect a mechanic's lien claimants' lien rights arising from a mechanic's lien. Nor does

1 the docket in this case evidence the filing of a Notice of Perfection of the Mechanics Lien by  
 2 CEJA pursuant to section 546(b) of the Bankruptcy Code. As a result, the Trustee contends  
 3 that the Mechanics Lien is avoidable. Until avoided, the Trustee asserts that the Mechanics  
 4 Lien is in bona fide dispute pursuant to section 363(f)(4) of the Bankruptcy Code, and  
 5 therefore, that the sale proposed herein may be approved by this Court free and clear of  
 6 CEJA's Mechanics Lien with such lien attaching to the proceeds of the sale in the same order  
 7 and priority as exists at present and subject to whatever defenses may exist to the claims  
 8 and/or liens and subject to any agreed-upon carve-outs and/or surcharges as may be ordered  
 9 pursuant to 11 U.S.C. § 506(c).

10       13. The Trustee intends to contact CEJA shortly with respect to the CEJA Mechanics  
 11 Lien and is hopeful that this lien claim will be resolved prior to the hearing on the Motion as  
 12 well.

13       13. The Trustee believes that the Purchase Price is a fair price for the Property, that  
 14 the overbidding process will also protect creditors' interests for the estate to obtain the best  
 15 price for the Property, and that since Ms. Conley's and CEJA's liens will attach to the Net  
 16 Sales Proceeds until resolution of any defenses thereto, Ms. Conley and CEJA are likely to  
 17 consent to the proposed sale in any event.

#### Fair Price for Property

19       14. As set forth in its Schedule D filed October 28, 2013, the Debtor valued the  
 20 Property at approximately \$150,000.00. However, although the Purchase Price is less than  
 21 Debtor's estimated value, based on the offers received on the Property through the Agent's  
 22 efforts, the Trustee believes that the Purchase Price represents fair value to the Estate and  
 23 represents a fair market value for the Property.

24       15. Furthermore, the Trustee has independently concluded, based on her  
 25 investigation, that the Purchase Price of \$114,000.00 appears to be a fair and reasonable  
 26 price for the Property. This conclusion is based, in part, on the Trustee's review with the Agent  
 27 of property values for similarly situated properties in the area and the condition of the existing  
 28 improvements to the Property that are included within the Property, including the recent

1 damage to the Property caused by pipes that became frozen and burst within the vacant unit  
 2 of the Property.

3 **Proposed Terms for Overbidding**

4 16. The Trustee proposes that any persons or entities wishing to bid on the Property  
 5 be required to first become a qualified overbidder (a "Qualified Overbidder") in the manner set  
 6 forth below, prior to the commencement of the hearing on the Motion.

7 17. Any person or entity wishing to become a Qualified Overbidder must deliver to  
 8 the Trustee a non-refundable deposit in the amount of \$10,000.00 (the "Overbidder Deposit"),  
 9 in the form of a cashier's check or money order made payable to Kimberly J. Husted,  
 10 Chapter 7 Trustee of the Granite Bay Investment Partners, LLC Bankruptcy Estate," which will  
 11 be applied to the purchase price for the Property if the Qualified Overbidder is the successful  
 12 purchaser following the hearing on the Motion, and demonstrate to the Trustee the ability to  
 13 close escrow within fifteen (15) calendar days of the Court's order approving this Motion. Such  
 14 financial showing shall include, without limitation, either overbidder qualification for financing  
 15 acceptable to Trustee and sufficient to pay the Purchase Price for the Property, or proof of the  
 16 ability of the overbidder to fund payment of the Purchase Price in cash. The Overbidder  
 17 Deposit and showing of financial ability to perform shall be delivered to the Trustee no later  
 18 than two (2) business days prior to the date scheduled for the hearing on this Motion.

19 18. Prior to the hearing, a Qualified Overbidder may obtain permission from the  
 20 Trustee to inspect the Property in order to investigate the Property and waive all contingencies  
 21 to its purchase thereof, including property and title review and approval. Any such inspection  
 22 shall be subject to the Qualified Overbidder (i) delivering the Deposit and showing of financial  
 23 ability to perform as provided above and (ii) executing a form of Purchase and Sale Agreement  
 24 on the same terms as Purchase Agreement entered into by Buyer. By submitting an overbid  
 25 at the sale hearing, any Qualified Overbidder shall be deemed to have conclusively waived any  
 26 and all contingencies to the purchase of the Property, except for Court approval of the sale to  
 27 such Qualified Overbidder as the highest bidder thereon.

28 19. If a Qualified Overbidder is not successful at the hearing, the Overbidder Deposit

1 shall be returned to such Qualified Overbidder upon the entry of the order confirming the  
 2 successful bidder for the Property. If a Qualified Overbidder is approved as the high bidder  
 3 but fails to consummate the sale or otherwise breaches its covenants to the Trustee and the  
 4 Estate, its Overbidder Deposit shall be retained and administered as an asset of the Estate.

5       20. The Trustee proposes that the initial overbid be \$115,000.00 and subsequent  
 6 overbids, if any, be in increments of \$1,000. The high bidder must purchase the Property on  
 7 terms identical to those set forth in the Purchase Agreement, subject to any modifications  
 8 ordered by the Court, and with all contingencies to such purchase in the Purchase Agreement  
 9 deemed waived by the bidder due to its election to participate in the auction thereon. If the  
 10 Buyer is the high bidder, it shall pay the greater of its high bid or \$114,000.00 for the Property.  
 11 In the event a Qualified Overbidder outbids the Buyer, Buyer's offer to purchase the Property  
 12 pursuant to the terms of the Purchase Agreement shall be maintained, for a period of 30 days  
 13 after the conclusion of the hearing on this motion, as a back-up offer (with the Purchase Price  
 14 based on the highest bid made by Buyer at the hearing on the Motion). Any such back-up  
 15 offer shall become effective upon the overbidder's failure to close in accordance with the terms  
 16 of the Purchase Agreement, as may be modified by the Court, so long as Buyer's Purchase  
 17 Price is the next highest bid for the Property. In any event, the Purchase Agreement shall  
 18 terminate and the Deposit shall be returned to Buyer upon close of escrow for the sale of the  
 19 Property by any successful Qualified Overbidder.

#### Authorization to Pay Commission to Agent

20       21. The Trustee required the professional services of Agent to act as the Estate's  
 21 agent to market and sell the Property. By separate application, the Trustee sought approval  
 22 by the Court to employ the Agent on behalf of the Estate pursuant to the terms of a listing  
 23 agreement filed therewith (the "Listing Agreement").

24       22. The Listing Agreement provides for the Agent to receive a commission of six  
 25 percent (6%) of the sales price of the Property. Based on her experience as a Chapter 7  
 26 trustee, the Trustee believes such a commission is within the range of customary and  
 27 reasonable fees charged and paid in the area for professional brokerage services in

1 connection with commercial real estate such as the Property. In consideration of the Agent's  
 2 efforts to market the Property and obtain Buyer's offer to purchase the Property, and  
 3 consistent with the terms of the Court-approved Listing Agreement, the Trustee seeks  
 4 authorization from the Court to pay the commission to Agent upon closing of escrow from the  
 5 Sales Proceeds.

6       23. The Trustee is informed and believes that Broker remains disinterested within  
 7 the meaning of the Bankruptcy Code for purposes of this engagement. As described in the  
 8 Purchase Agreement, the Broker represents both the Trustee and the Buyer in this  
 9 transaction. Based on her experience, the Trustee is informed that such dual representation  
 10 is common in the commercial real estate brokerage community. The dual representations was  
 11 disclosed to the Trustee and the Buyer. Finally, because the Broker is acting as agent for both  
 12 buyer and seller in this transaction, the entire six percent (6%) commission will be paid to the  
 13 Broker, and will not be split with any other parties.

14       24. The Trustee believes that Broker has carried and continues to carry out his  
 15 responsibilities under the Listing Agreement, that the payment of the commission is for  
 16 reasonable services, necessarily incurred for the benefit of the estate, and that the  
 17 commission should be paid from escrow pursuant to the Listing Agreement, on a final basis.

18       **WHEREFORE**, the Trustee respectfully requests the Court enter an order authorizing  
 19 her to:

20       1. sell the Property to the Buyer on the terms and conditions set forth above and  
 21 in the Purchase Agreement, or alternatively to the successful Qualified Overbidder at the  
 22 hearing on the Motion on the terms set forth in the Purchase Agreement and subject to any  
 23 modifications ordered by the Court;

24       2. sell the Property free and clear of the Attachment, Lis Pendens and Mechanics  
 25 Lien, with the liens, interests and encumbrances of the secured creditors in whose favor the  
 26 Attachment, Lis Pendens and Mechanics Lien are filed attaching to the Net Sales Proceeds  
 27 as described above;

28       3. sell the Property on an "as is" "where is" "with all faults" basis, with no

1 representations or warranties, express or implied, with respect to the Property;

2       4. pay the commission to Agent required under the Listing Agreement approved by  
3 separate motion upon the closing of the sale of the Property;

4       5. pay the reasonable and necessary costs and expenses of closing through  
5 escrow, including the Estate's pro-rata share of real property taxes and assessments secured  
6 against the Property and the amount of all delinquent taxes secured against the Property,  
7 upon the closing of the sale from the Sale Proceeds thereof; and

8       6. sign any and all documents that may be appropriate and/or necessary to  
9 consummate the sale.

10 Dated: February 11, 2014

HEFNER, STARK & MAROIS, LLP

11 By



Howard S. Nevins, Attorneys for  
KIMBERLY J. HUSTED, Chapter 7 Trustee